



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO E041 OF 2021

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF AAPW (MINOR)

BY

WVO AND SWM (APPLICANTS)

JUDGMENT

1. The Applicants WVO and SWM are in a monogamous marriage solemnized at The [Particulars Withheld] Nairobi on 28th February 2014 as evinced by their Certificate of Marriage serial No. xxxxx. They have a son out of their union, who is now 6 years old. The 1st Applicant has another child; a daughter aged 10 years from a previous relationship while the 2nd Applicant is the biological mother of the minor subject to this adoption. They wish to adopt the female minor known as AAPW through Originating Summons dated 26th March 2021.
2. From the pleadings the Court gathers that the 1st Applicant works as a [Particulars Withheld] airline pilot while the 2nd Applicant is a manager at [Particulars Withheld] Limited. The Applicants live in Kilimani area, within Nairobi County and both profess the Christian faith.
3. The records before the court indicate that the minor in this matter was born on 28th April 2004 as evinced by her birth certificate serial No. xxxxx. Her biological father DO has been absent from her life since birth and has never been traced. The Applicants herein have been providing financial support and other parental responsibility over the minor.
4. Prior to the hearing of the adoption application, Kenya Children's Homes Adoption Society prepared and filed a report dated 21st January 2021 and issued a certificate serial No. xxxx declaring the child free for adoption. The Court appointed LKM, as guardian ad litem on 22nd June 2021. She filed a report dated 25th August 2021, which was favourable and recommended the adoption of the child by the Applicants.
5. An Officer from the Director of Children Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the upkeep and education of the minor. She filed a report dated 2nd August 2021, recommending the adoption for reasons that the minor stands to benefit from the opportunities provided by becoming a child of the Applicants. That she will gain a family and grow up in a stable home. The Applicants were also found to have fulfilled the statutory requirements for adoption.
6. This court is guided by Article 53(2) of the Constitution, which provides the overarching principle, which must apply whenever any decision concerning children is to be considered. It provides that

“A child's best interests are of paramount importance in every matter concerning the child.”

This principle is also embedded in section 4(3) of the Children's Act.

7. This is a kinship adoption. Under the guidelines for Alternative Family Care of Children in Kenya at page 153, kinship adoption is defined as adoption by adopters who are kin or relatives within the extended family of the child.

8. This is also a local adoption and after careful assessment of the reports filed herein, I am satisfied that the Applicants have fulfilled all the legal requirements relating to the adoption of the minor. WVO was born on 6th April 1980 and is 41 years old while SWM was born on 16th March 1980 and is 41 years old as well. They are therefore within the age bracket eligible to adopt, being adults having attained the age of twenty-five and are at least 21 years older than the child but have not attained the age of sixty-five years as provided by section 158(1) of the Children's Act No. 8 of 2011. The Applicants also meet the social parameters that are considered relevant to them taking on parental responsibility and custody of the minor in this matter on a permanent basis as would be conferred by the adoption orders sought.

9. It is noteworthy that the minor who is now 17 years old swore an affidavit of consent agreeing to be adopted by the Applicants and referring to them as her parents. Consent from the minors biological father was dispensed with on account of him not being traced. This court has therefore formed the opinion that it would be in the best interest of the minor to be adopted by the Applicants. Not only does the child gain a warm family but also maintains kinship ties with his relatives.

10. Reasons wherefore, I allow the prayers sought in the originating summons dated 26th March 2021 and orders as follows;

I. The Applicants WWO and SWM be and are hereby allowed to adopt AAPW who shall henceforth be known as APZO.

II. Her date of birth is 28th April 2004 and she is presumed to have been born in Kenya in accordance with article 14(4) of the Constitution and her place of birth is Nairobi.

III. VWM is hereby appointed as legal guardian in the event that the Applicants die or are incapacitated by ill health.

IV. The Registrar General is directed to enter this order in the Adopted Children's Register.

V. The director of Immigration is hereby authorized to issue the child with a Kenyan Passport.

VI. The guardian ad litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 9TH DAY OF DECEMBER, 2021

.....

L.A ACHODE

HIGH COURT JUDGE